

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6956 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
Nos. 1 to 5 No.

DELIP DEGAMBAR MARATHA

Versus

COMMISSIONER OF POLICE

Appearance:

MR SATISH R PATEL for Petitioner

MR.NEEGAM SHUKLA, APP for Respondents.

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 08/10/96

ORAL JUDGEMENT

This Special Civil Application is directed against the order dated 15.4.1996 passed by the Police Commissioner, Ahmedabad City. The detention order was executed on 15.4.1996 itself and since then the petitioner is under detention at Bhavnagar District Jail, Bhavnagar.

This Special Civil Application challenging the

detention order was filed on 11.9.1996 and the Rule returnable was issued for 26.9.1996 on 12.9.1996. So far no affidavit-in-reply has been filed nor any affidavit has been filed by the Detaining Authority. The grounds of detention show that four cases of the year 1996 under the Prohibition Act were pending against the petitioner involving 10 to 35 litres country liquor and all these cases were pending police investigation at the time when the order of detention was passed. In the detention order the reference has been made to the latthakand i.e. the tragedy which had happened in past on account of the consumption of the country liquor with which the petitioner is not concerned. The petitioner has been taken to be the bootlegger and in view of the aforesaid criminal cases it is said that the petitioner is engaged in antisocial activities and the reference has also been made to the statements made by the witnesses with regard to the incidents dated 3.4.1996 and 9.4.1996. For the incident dated 3.4.1996 the witness has stated that he did not agree to the petitioner's request to keep the country liquor stock in his house and therefore the petitioner got enraged, abused the witness, dragged him to the road opposite CMC and publicly beaten the witness and when the witness raised an alarm people gathered there but the petitioner ran after the members of the crowd with knife resulting in helter-skelter and thus an atmosphere of terror was created and routine life of the people was disturbed. With regard to the incident dated 9.4.1996 the witness has stated that while he was passing through CMC, Opposite Mahmad Kasai's Chawl he asked the petitioner and his associates who were badly drunk that they may go away from the locality but the petitioner and his associates threatened the witness and gave him public beating, the witness raised an alarm and therefore a crowd was collected. The petitioner ran after the members of the crowd with weapons resulting the people into helter-skelter creating fear psychosis and thus the routine life of the people was disturbed. This statement has been supported by other two witnesses. All the witnesses have deposed that their identity be kept secret for the reasons of their security because they are afraid and frightened of the petitioner. For these reasons the Detaining Authority has invoked section 9(2) of the Gujarat Prevention of Antisocial Activities Act, 1985 to keep the identity of the witnesses secret. The Detaining Authority has opined that the proceedings under section 93 of the Prohibition Act may not serve the purpose and the proceedings of externment may take long time and therefore the petitioner being engaged in activities of bootlegging and the antisocial activities is required to be detained and accordingly the detention order dated

15.4.1996 was passed.

I have considered the submissions made on behalf of both the sides. I need not deal with all the grounds on which the detention order is challenged because I find that the allegations as have been levelled do not constitute a case of breach of public order. I have already considered the similar allegations in Special Civil Application No.3879 of 1996 decided on 4.10.1996 and after considering the ratio of the judicial pronouncements by the Supreme Court and this Court it has been found that the allegations such as levelled in the present case do not constitute the case of breach of public order and at the most it is a case of breach of law and order. The reasoning on which the Special Civil Application No. 3879 of 1996 has been allowed applies with full force to the facts of the given case. It is held that the detention order as passed in this case was not at all warranted.

Accordingly this Special Civil Application is allowed. The impugned detention order dated 15.4.1996 passed against the petitioner detenu by the Police Commissioner, Ahmedabad City is hereby quashed and set aside and it is directed that the petitioner-detenu be set at liberty forthwith if not required in any other case. Rule made absolute.
